

# 46.317 Reporting Nonconforming Items.

(a) Except as provided in paragraph (b) of this section, the contracting officer shall insert the clause at [52.246-26](#), Reporting Nonconforming Items, in solicitations and contracts - as follows:

(1) For an acquisition by any agency, including the Department of Defense, of-

(i) Any items that are subject to higher-level quality standards in accordance with the clause at [52.246-11](#), Higher-Level Contract Quality Requirement;

(ii) Any items that the contracting officer, in consultation with the requiring activity determines to be critical items for which use of the clause is appropriate;

(2) In addition (as required by paragraph (c)(4) of section 818 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81)), for an acquisition that exceeds the simplified acquisition threshold and is by, or for, the Department of Defense of electronic parts or end items, components, parts, or materials containing electronic parts, whether or not covered in paragraph (a)(1) of this section;

(3) For the acquisition of services, if the contractor will furnish, as part of the service, any items that meet the criteria specified in paragraphs (a)(1) through (a)(2) of this section.

(b) The contracting officer shall not insert the clause at [52.246-26](#), Reporting Nonconforming Items, in solicitations and contracts when acquiring—

(1) Commercial items using [part 12](#) procedures; or

(2) Medical devices that are subject to the Food and Drug Administration reporting requirements at 21 CFR 803.

(c) If required by agency policy, the contracting officer may modify paragraph (b)(4) of the clause at [52.246-26](#), but only to change the responsibility for the contractor to submit reports to the agency rather than to Government-Industry Data Exchange Program (GIDEP), so that the agency instead of the contractor submits reports to GIDEP within the mandatory 60 days.

**Parent topic:** [Subpart 46.3 - Contract Clauses](#)